

CONFERENCE COMMITTEE REPORT DIGEST FOR ESB 446

Citations Affected: IC 8-1.5-5; IC 13-26; IC 36-1-6-2; IC 36-3-7-5; IC 36-9-23-32; IC 36-11-11-2.

Synopsis: Local government liens. Provides that storm water management district fees constitute liens. Sets forth the procedures by which: (1) a lien attaches and is enforced; and (2) payment of fees is enforced. Conforms the lien procedure for regional sewer districts with the lien procedure for municipal sewers. With respect to cleanup by a local unit of government of a condition that exists on real property and that violates a local ordinance: (1) provides that a lien attaches to the property for the cost of the cleanup when the lien is recorded; (2) states when a bill for the cleanup becomes delinquent; and (3) establishes procedures for collection of fees and penalties and recording and release of liens. Provides that liens for taxes levied by a consolidated city are perfected when evidenced on the tax duplicate. **(This conference committee report deletes provisions concerning: (1) connection by a property owner to a regional sewer district's sewer system; (2) campground sewage service; (3) dissolution of a smaller conservancy district and assumption of operations, obligations, and assets by a larger district; and (4) a recorded copy of a mortgage or an instrument having the same effect as if the original document had been recorded.)**

Effective: July 1, 2005.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 446 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT concerning local government.
- 3 Delete everything after the enacting clause and insert the following:
- 4 SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE
- 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
- 6 JULY 1, 2005]: **Sec. 29. (a) Subsections (c), (d), and (e) do not apply**
- 7 **to a city that before January 1, 2005, adopted an ordinance**
- 8 **establishing procedures for the collection of unpaid user fees under**
- 9 **this chapter through the enforcement of a lien.**
- 10 **(b) Fees assessed against real property under this chapter**
- 11 **constitute a lien against the property assessed. The lien is superior**
- 12 **to all other liens except tax liens. Except as provided in subsections**
- 13 **(c) and (d), the lien attaches when notice of the lien is filed in the**
- 14 **county recorder's office under section 30 of this chapter.**
- 15 **(c) A fee is not enforceable as a lien against a subsequent owner**
- 16 **of property unless the lien for the fee was recorded with the county**
- 17 **recorder before the conveyance to the subsequent owner. If**
- 18 **property is conveyed before a lien is filed, the department shall**
- 19 **notify the person who owned the property at the time the fee**
- 20 **became payable. The notice must inform the person that payment,**
- 21 **including penalty fees for delinquencies, is due not more than**
- 22 **fifteen (15) days after the date of the notice. If payment is not**

received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(d) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner within twenty (20) days after the time the user fees became sixty (60) days delinquent. However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.

(e) The department shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 2. IC 8-1.5-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

(1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:

(A) The name of the owner of each lot or parcel of real property on which fees are delinquent.

(B) A description of the premises, as shown by the records of the county auditor.

(C) The amount of the delinquent fees, together with the penalty.

(2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded

under subsection (c), certify to the county auditor a list of the liens that remain unpaid for collection in the next May. The county and its officers and employees are not liable for any material error in the information on this list.

(e) The board shall release any recorded lien when the delinquent fees, penalties, service charges, and recording fees have been fully paid. The county recorder shall charge a fee for releasing the lien in accordance with IC 36-2-7-10.

(f) Upon receipt of the list under subsection (c), the county auditor of each county shall add a fifteen dollar (\$15) certification fee for each lot or parcel of real property on which fees are delinquent. The fee is in addition to all other fees and charges. The county auditor shall immediately enter on the tax duplicate for the district the delinquent fees, penalties, service charges, recording fees, and certification fees, which are due not later than the due date of the next May installment of property taxes. The county treasurer shall include any unpaid charges for the delinquent fee, penalty, service charge, recording fee, and certification fee to the owner or owners of each lot or parcel of property, at the time the next cycle's property tax installment is billed.

(g) After certification of liens under subsection (d), the board may not collect or accept delinquent fees, penalties, service charges, recording fees, or certification fees from property owners whose property has been certified to the county auditor.

(h) If a delinquent fee, penalty, service charge, recording fee, and certification fee are not paid, they shall be collected by the county treasurer in the same way that delinquent property taxes are collected.

(i) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the district. The county treasurer shall retain the service charges and certification fees that have been collected and shall deposit them in the county general fund.

(j) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section 29(e) of this chapter, files a verified demand with the county auditor.

(k) A board may write off a fee or penalty under subsection (a) that is less than forty dollars (\$40).

SECTION 3. IC 8-1.5-5-31 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 31. (a) A district may foreclose a lien established by this chapter in order to collect fees and penalties. The district shall recover the amount of the fees and penalties, and a reasonable attorney's fee. The court shall order the sale to be made without relief from valuation or appraisement laws.

(b) Except as otherwise provided by this chapter, actions under this chapter are subject to the general statutes regarding municipal

1 **public improvement assessments.**

2 SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE
3 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2005]: **Sec. 4. Rates, fees, or charges made, assessed, or**
5 **established by the district are a lien on a lot, parcel of land, or**
6 **building that is connected with or uses the works of the district in**
7 **the manner established under IC 36-9-23. The liens:**

8 (1) **attach;**

9 (2) **are recorded;**

10 (3) **are subject to the same penalties, interest, and reasonable**
11 **attorney's fees on recovery; and**

12 (4) **shall be collected and enforced;**

13 **in substantially the same manner as provided in IC 36-9-23-31**
14 **through IC 36-9-23-32.**

15 SECTION 5. IC 36-1-6-2 IS AMENDED TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If a condition violating an
17 ordinance of a municipal corporation exists on real property, officers of
18 the municipal corporation may enter onto that property and take
19 appropriate action to bring the property into compliance with the
20 ordinance. However, before action to bring compliance may be taken,
21 all persons holding a substantial interest in the property must be given
22 a reasonable opportunity of at least ten (10) days but not more than
23 sixty (60) days to bring the property into compliance. If the municipal
24 corporation takes action to bring compliance, the expenses incurred by
25 the municipal corporation to bring compliance constitute a lien against
26 the property. **The lien attaches when notice of the lien is recorded in**
27 **the office of the county recorder in which the property is located.**
28 The lien is superior to all other liens except liens for taxes, in an
29 amount that does not exceed:

30 (1) two thousand five hundred dollars (\$2,500) for real property
31 that:

32 (A) contains one (1) or more occupied or unoccupied single or
33 double family dwellings or the appurtenances or additions to
34 those dwellings; or

35 (B) is unimproved; or

36 (2) ten thousand dollars (\$10,000) for all other real property not
37 described in subdivision (1).

38 (b) The municipal corporation may issue a bill to the owner of the
39 real property for the costs incurred by the municipal corporation in
40 bringing the property into compliance with the ordinance, including
41 administrative costs and removal costs.

42 (c) ~~If the owner of the real property fails to pay a bill issued under~~
43 ~~subsection (b); the municipal corporation may, after thirty (30) days,~~
44 ~~certify to the county auditor the amount of the bill, plus any additional~~
45 ~~administrative costs incurred in the certification. The auditor shall place~~
46 ~~the total amount certified on the tax duplicate for the property affected;~~
47 ~~and the total amount, including any accrued interest, shall be collected~~
48 ~~as delinquent taxes are collected and shall be disbursed to the general~~
49 ~~fund of the municipal corporation.~~

50 (c) **A bill issued under subsection (b) is delinquent if the owner of**
51 **the real property fails to pay the bill within thirty (30) days after**

the date of the issuance of the bill.

(d) Whenever a municipal corporation determines it necessary, the officer charged with the collection of fees and penalties for the municipal corporation shall prepare:

(1) a list of delinquent fees and penalties that are enforceable under this section, including:

(A) the name or names of the owner or owners of each lot or parcel of real property on which fees are delinquent;

(B) a description of the premises, as shown on the records of the county auditor; and

(C) the amount of the delinquent fees and the penalty; or

(2) an instrument for each lot or parcel of real property on which the fees are delinquent.

(e) The officer shall record a copy of each list or each instrument with the county recorder, who shall charge a fee for recording the list or instrument under the fee schedule established in IC 36-2-7-10.

(f) The amount of a lien shall be placed on the tax duplicate by the auditor. The total amount, including any accrued interest, shall be collected in the same manner as delinquent taxes are collected and shall be disbursed to the general fund of the municipal corporation.

(g) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before conveyance to the subsequent owner. If the property is conveyed before the lien is recorded, the municipal corporation shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not later than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be considered a bad debt loss.

(h) The municipal corporation shall release:

(1) liens filed with the county recorder after the recorded date of conveyance of the property; and

(2) delinquent fees incurred by the seller;

upon receipt of a written demand from the purchaser or a representative of the title insurance company or the title insurance company's agent that issued a title insurance policy to the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

(i) The county auditor shall remove the fees, penalties, and service charges that were not recorded before a recorded conveyance to a subsequent owner upon receipt of a copy of the written demand under subsection (h).

SECTION 6. IC 36-3-7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) Liens for taxes levied by the consolidated city are perfected when ~~certified to the auditor of the county~~ evidenced on the tax duplicate in the office of the treasurer

1 **of the county.**

2 (b) Liens created when the city enters upon property to make
3 improvements to bring it into compliance with a city ordinance, and
4 liens created upon failure to pay charges assessed by the city for
5 services shall be certified to the auditor, after the adoption of a
6 resolution confirming the incurred expense by the appropriate city
7 department, board, or other agency. In addition, the resolution must
8 state the name of the owner as it appears on the township assessor's
9 record and a description of the property. ~~These liens are perfected when~~
10 ~~certified to the auditor.~~

11 (c) The amount of a ~~perfected~~ lien shall be placed on the tax duplicate
12 by the auditor in the nature of a delinquent tax subject to enforcement
13 and collection as otherwise provided under IC 6-1.1-22, IC 6-1.1-24,
14 and IC 6-1.1-25. However, the amount of the lien is not considered a
15 tax within the meaning of IC 6-1.1-21-2(b) and shall not be included as
16 a part of either a total county tax levy under IC 6-1.1-21-2(g) or the tax
17 liability of a taxpayer under IC 6-1.1-21-5 for purposes of the tax credit
18 computations under IC 6-1.1-21-4 and IC 6-1.1-21-5.

19 SECTION 7. IC 36-9-23-32 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 32. (a) Fees assessed
21 against real property under this chapter or under any statute repealed by
22 IC 19-2-5-30 constitute a lien against the property assessed. The lien is
23 superior to all other liens except tax liens. Except as provided in
24 subsections (b) and (c), the lien attaches when notice of the lien is filed
25 in the county recorder's office under section 33 of this chapter.

26 (b) A fee is not enforceable as a lien against a subsequent owner of
27 property unless the lien for the fee was recorded with the county
28 recorder before the conveyance to the subsequent owner. If the property
29 is conveyed before the lien can be filed, the municipality shall notify
30 the person who owned the property at the time the fee became payable.
31 The notice must inform the person that payment, including penalty fees
32 for delinquencies, is due not ~~less~~ **more** than fifteen (15) days after the
33 date of the notice. If payment is not received within one hundred eighty
34 (180) days after the date of the notice, the amount due may be expensed
35 as a bad debt loss.

36 (c) A lien attaches against real property occupied by someone other
37 than the owner only if the utility notified the owner within twenty (20)
38 days after the time the utility fees became sixty (60) days delinquent.
39 However, the utility is required to give notice to the owner only if the
40 owner has given the general office of the utility written notice of the
41 address to which ~~his~~ **the owner's** notice is to be sent.

42 (d) The municipality shall release:

43 (1) liens filed with the county recorder after the recorded date of
44 conveyance of the property; and

45 (2) delinquent fees incurred by the seller;

46 upon receipt of a verified demand in writing from the purchaser. The
47 demand must state that the delinquent fees were not incurred by the
48 purchaser as a user, lessee, or previous owner, and that the purchaser
49 has not been paid by the seller for the delinquent fees.

50 SECTION 8. IC 36-11-11-2 IS AMENDED TO READ AS
51 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may

- 1 enforce delinquent fees and penalties in the manner described in
2 ~~IC 13-26-13~~. **IC 36-9-23.**
3 SECTION 9. THE FOLLOWING ARE REPEALED [EFFECTIVE
4 JULY 1, 2005]: IC 13-26-12; IC 13-26-13.
 (Reference is to ESB 446 as reprinted March 29, 2005.)

Conference Committee Report
on
Engrossed Senate Bill 446

Signed by:

Senator Gard
Chairperson

Representative Wolkins

Senator Lanane

Representative Dobis

Senate Conferees

House Conferees